



Paper No. 6

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**OFFICE OF PETITIONS**In re Application of  
Charny et al.  
Application No. 10/038,259  
Filed: January 2, 2002  
Attorney Docket No. CISC731:  
:  
: DECISION GRANTING PETITION  
: UNDER 37 CFR 1.137(b)  
:

This is a decision on the petition, filed November 10, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is GRANTED.

The present nonprovisional application became the subject of an application filed in a foreign country on December 23, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

Petitioner filed a "Request to Rescind Previous Nonpublication Request" on December 30, 2002 (certificate of mailing under 37 CFR 1.8 dated December 23, 2002). However, the rescission request was not eligible for the benefits of 37 CFR 1.8.<sup>1</sup> The rescission request did not provide notice of the foreign filing. Accordingly, as the rescission was not made until after the filing of the foreign application, applicant was required by 35 U.S.C. 122(b)(2)(B)(iii) to provide notice of the foreign filing not later than forty-five days after the date the foreign application was filed to avoid abandonment of the application.<sup>2</sup>

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

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<sup>1</sup> See "Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv)", available at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/35usc122b2binterpret.htm>.

<sup>2</sup> See id.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. The present application published on July 3, 2003.

This application is being forwarded to Technology Center Art Unit 2154 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-5589.

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